

FILED

LAW OFFICE OF MICHAEL E. LINDSEY  
MICHAEL E. LINDSEY, State Bar No. 99044  
4455 Morena Blvd., Ste. 207  
San Diego, California 92117-4325  
Tel: (858) 270-7000

ANDERSON LAW FIRM  
MARTIN W. ANDERSON, State Bar No. 178422  
2070 North Tustin Avenue  
Santa Ana, California 92705  
Tel: (714) 516-2700 • Fax: (714) 532-4700  
E-mail: martin@andersonlaw.net

Attorneys for Plaintiff Denise Miller

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DENISE MILLER,

Plaintiff,

v.

GENERAL MOTORS  
CORPORATION,

Defendant.

08 CV 0665 J AJB  
Case No.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff alleges as follows:

**JURISDICTION**

1. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.00. Plaintiff is citizen of the state of California. Defendant General Motors Corporation is a corporation that is organized and existing under the laws of the state of Delaware and having its principal place of business in the state of Michigan.

ANDERSON LAW FIRM

2070 NORTH TUSTIN AVENUE

SANTA ANA, CALIFORNIA 92705

TELEPHONE: (714) 516-2700

ORIGINAL

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2070 NORTH TUSTIN AVENUE  
SANTA ANA, CALIFORNIA 92705  
TELEPHONE: (714) 516-2700

**PARTIES**

2. As used in this Complaint, the word "Plaintiff" shall refer to Plaintiff Denise Miller.

3. As used in this Complaint, the word "Defendant" shall refer to all Defendants named in this Complaint.

**FIRST CLAIM FOR RELIEF  
BY PLAINTIFF AGAINST DEFENDANT  
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY  
CAL. CIV. CODE § 1794**

4. On or about July 24, 2007, Plaintiff purchased a 2006 Buick Lucerne, VIN #1G4HP57236U173253 (hereafter "Vehicle") which was manufactured, distributed, or sold by Defendant. The total consideration which Plaintiff paid or agreed to pay, including taxes, license, and finance charges is \$30,552.83. The Vehicle was purchased primarily for personal, family, or household purposes. Plaintiff purchased the Vehicle from a person or entity engaged in the business of manufacturing, distributing, or selling consumer goods at retail.

5. In connection with the purchase, Plaintiff received an express written warranty in which Defendant undertook to preserve or maintain the utility or performance of the Vehicle or to provide compensation if there is a failure in utility or performance for a specified period of time. The warranty provided, in relevant part, that in the event a defect developed with the Vehicle during the warranty period, Plaintiff could deliver the Vehicle for repair services to Defendant's representative and the Vehicle would be repaired.

6. During the warranty period, the Vehicle contained or developed defects which cause a grinding noise when turning the steering wheel, defects which cause the steering wheel not to return to center after completing a turn, defects which cause a popping noise in the steering at times when turning the steering wheel, and defects which cause the vehicle to pull hard to the right.

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1           7. Pursuant to Civil Code §§ 1792 and 1791.1, the sale of the Vehicle  
2 was accompanied by Defendant's implied warranty of merchantability. The  
3 duration of the implied warranty is coextensive in duration with the duration of the  
4 express written warranty provided by Defendant.

5           8. The implied warranty of merchantability means and includes that the  
6 Vehicle will comply with each of the following requirements: (1) The Vehicle will  
7 pass without objection in the trade under the contract description; (2) The Vehicle  
8 is fit for the ordinary purposes for which such goods are used; (3) The Vehicle is  
9 adequately contained, packaged, and labeled; and (4) The Vehicle will conform to  
10 the promises or affirmations of fact made on the container or label.

11           9. On or about July 24, 2007, or during the time period in which the  
12 implied warranty was in effect, the Vehicle contained or developed the defects  
13 stated in paragraph 6, above. The existence of each of these defects constitutes a  
14 breach of the implied warranty because the Vehicle (1) does not pass without  
15 objection in the trade under the contract description, (2) is not fit for the ordinary  
16 purposes for which such goods are used, (3) is not adequately contained, packaged,  
17 and labeled, and (4) does not conform to the promises or affirmations of fact made  
18 on the container or label.

19           10. Plaintiff has rightfully rejected and/or justifiably revoked acceptance  
20 of the Vehicle, and has exercised a right to cancel the sale. By serving this  
21 Complaint, Plaintiff does so again. Accordingly, Plaintiff seeks the remedies  
22 provided in California Civil Code section 1794(b)(1), including the entire purchase  
23 price. In addition, Plaintiff seeks the remedies set forth in California Civil Code  
24 section 1794(b)(2), including the diminution in value of the Vehicle resulting from  
25 its defects. Plaintiff believes that, at the present time, the Vehicle's value is *de*  
26 *minimis*.  
27  
28

1 11. Plaintiff has been damaged by Defendant's failure to comply with its  
2 obligations under the implied warranty, and therefore brings this claim pursuant to  
3 Civil Code § 1794.

4 **SECOND CLAIM FOR RELIEF**  
5 **BY PLAINTIFF AGAINST DEFENDANT**  
6 **BREACH OF THE IMPLIED WARRANTY OF FITNESS**  
7 **CAL. CIV. CODE § 1794**

8 12. Plaintiff incorporates by reference the allegations contained in  
9 paragraphs 4 through 6 and paragraph 10, above.

10 13. Defendant is a manufacturer, distributor, or seller who had reason to  
11 know at the time of the retail sale that the Vehicle was required for a particular  
12 purpose and that the Plaintiff was relying on the Defendant's skill or judgment to  
13 select or furnish suitable goods.

14 14. Pursuant to Civil Code § 1792.1, the sale of the Vehicle was  
15 accompanied by Defendant's implied warranty that the Vehicle would be fit for  
16 Plaintiff's particular purpose. The duration of the implied warranty is coextensive  
17 in duration with the duration of the express written warranty provided by  
18 Defendant.

19 15. On or about July 24, 2007, or during the time period in which the  
20 implied warranty was in effect, the Vehicle contained or developed the defects  
21 stated in paragraph 6, above. The existence of each of these defects constitutes a  
22 breach of the implied warranty because the Vehicle is not fit for Plaintiff's  
23 particular purpose.

24 16. Plaintiff has been damaged by Defendant's failure to comply with its  
25 obligations under the implied warranty, and therefore brings this claim pursuant to  
26 Civil Code § 1794.

ANDERSON LAW FIRM  
2070 NORTH TUSTIN AVENUE  
SANTA ANA, CALIFORNIA 92705  
TELEPHONE: (714) 516-2700

ANDERSON LAW FIRM  
2070 NORTH TUSTIN AVENUE  
SANTA ANA, CALIFORNIA 92705  
TELEPHONE: (714) 516-2700

**THIRD CLAIM FOR RELIEF**  
**BY PLAINTIFF AGAINST DEFENDANT**  
**BREACH OF EXPRESS WARRANTY**  
**CAL. CIV. CODE § 1794**

17. Plaintiff incorporates by reference the allegations contained in paragraphs 4 through 6 and paragraph 10, above.

18. In accordance with Defendant's warranty, Plaintiff delivered the Vehicle to Defendant's representative in this state to perform warranty repairs. Plaintiff did so within a reasonable time. Each time Plaintiff delivered the Vehicle, Plaintiff notified Defendant and its representative of the characteristics of the defects. However, the representative failed to repair the Vehicle, breaching the terms of the written warranty on each occasion.

19. Plaintiff has been damaged by Defendant's failure to comply with its obligations under the express warranty, and therefore brings this claim pursuant to Civil Code § 1794.

20. Defendant's failure to comply with its obligations under the express warranty was willful, in that Defendant and its representative were aware of their obligation to repair the Vehicle under the express warranty, but they intentionally declined to fulfill that obligation. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's actual damages pursuant to Civil Code § 1794(c).

**FOURTH CLAIM FOR RELIEF**  
**BY PLAINTIFF AGAINST DEFENDANT**  
**FAILURE TO PROMPTLY REPURCHASE PRODUCT**  
**CAL. CIV. CODE § 1793.2(d)**

21. Plaintiff incorporates by reference the allegations contained in paragraphs 4 through 6, above.

22. Defendant and its representatives in this state have been unable to service or repair the Vehicle to conform to the applicable express warranties after a

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1 reasonable number of attempts. Despite this fact, Defendant failed to promptly  
2 replace the Vehicle or make restitution to Plaintiff as required by Civil Code §§  
3 1793.2(d) and 1793.1(a)(2).

4 23. Plaintiff has been damaged by Defendant's failure to comply with its  
5 obligations pursuant to Civil Code §§ 1793.2(d) and 1793.1(a)(2), and therefore  
6 brings this claim pursuant to § 1794.

7 24. Defendant's failure to comply with its obligations under § 1793.2(d)  
8 was willful, in that Defendant and its representative were aware that they were  
9 unable to service or repair the Vehicle to conform to the applicable express  
10 warranties after a reasonable number of repair attempts, yet Defendant failed and  
11 refused to promptly replace the Vehicle or make restitution despite Plaintiff's  
12 demand. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's  
13 actual damages pursuant to § 1794(c).

14 25. Defendant does not maintain a qualified third-party dispute resolution  
15 process which substantially complies with § 1793.22. Despite Defendant's  
16 violation of § 1793.2(d) and its notice thereof, Defendant failed to comply with its  
17 obligations within a reasonable time. Accordingly, Plaintiff is entitled to a civil  
18 penalty of two times Plaintiff's actual damages pursuant to Civil Code § 1794(e).

19 26. Plaintiff seeks civil penalties pursuant to § 1794, subdivisions (c) and  
20 (e) in the alternative and does not seek to cumulate civil penalties, as provided in §  
21 1794(f).

22 **FIFTH CLAIM FOR RELIEF**

23 **BY PLAINTIFF AGAINST DEFENDANT**

24 **FAILURE TO COMMENCE REPAIRS WITHIN A REASONABLE TIME**  
25 **AND TO COMPLETE THEM WITHIN 30 DAYS**

26 **CAL. CIV. CODE § 1794**

27 27. Plaintiff incorporates by reference the allegations contained in  
28 paragraphs 4 through 6 and paragraph 10, above.



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28. Although Plaintiff delivered the Vehicle to Defendant's representative in this state, Defendant and its representative failed to commence the service or repairs within a reasonable time and failed to service or repair the Vehicle so as to conform to the applicable warranties within 30 days, in violation of Civil Code § 1793.2(b). Plaintiff did not extend the time for completion of repairs beyond the 30-day requirement.

29. Plaintiff has been damaged by Defendant's failure to comply with its obligations pursuant to § 1793.2(b), and therefore brings this claim pursuant to § 1794.

30. Defendant's failure to comply with its obligations under § 1793.2(b) was willful, in that Defendant and its representative were aware that they were obligated to service or repair the Vehicle to conform to the applicable express warranties within 30 days, yet they failed to do so. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's actual damages pursuant to § 1794(c).

**SIXTH CLAIM FOR RELIEF  
BY PLAINTIFF AGAINST DEFENDANT  
CONVERSION**

31. Plaintiff incorporates by reference the allegations contained in the Fourth Claim for Relief, above.

32. Plaintiff is the owner of and has an immediate right to possession of a specific sum of money which is capable of identification. *Farmers Ins. Ex. v. Zerín*, 53 Cal.App.4<sup>th</sup> 445, 451-52 (1997). Specifically, pursuant to Civil Code § 1793.2(d), Plaintiff is entitled to restitution of the amounts paid or payable for the Vehicle from Defendant.

33. Instead of delivering the money to which Plaintiff is entitled to Plaintiff, Defendant has wrongfully converted that money for its own use.

34. As a result of Defendant's conversion, Plaintiff has suffered damages.

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35. Defendant's conduct was fraudulent, oppressive, and malicious, and thus, Plaintiff is entitled to recover punitive damages pursuant to Civil Code section 3294. Specifically, Defendant was aware of its obligation to make restitution to Plaintiff and intentionally failed to do so. In addition, Defendant falsely and intentionally misrepresented to Plaintiff that it was not obligated to make restitution. Furthermore, Defendant is aware that Plaintiff has little choice but to continue using the defective Vehicle, and Defendant intentionally refused to make restitution to Plaintiff with the intent of arguing that Plaintiff's continued use is a reason to deny restitution to Plaintiff.

### PRAYER

PLAINTIFF PRAYS for judgment against Defendant as follows:

1. For Plaintiff's damages in the amount of at least \$30,552.83.
2. For restitution to Plaintiff in the amount of \$30,552.83.
3. On Plaintiff's Third Claim for Relief, for a civil penalty in the amount of \$61,105.66, which is two times Plaintiff's total damages, pursuant to Civil Code § 1794(c) and (e).
4. On Plaintiff's Fourth Claim for Relief, for a civil penalty in the amount of \$61,105.66, which is two times Plaintiff's total damages, pursuant to Civil Code § 1794(c) and (e).
5. On Plaintiff's Fifth Claim for Relief, for a civil penalty in the amount of \$61,105.66, which is two times Plaintiff's total damages, pursuant to Civil Code § 1794(c) and (e).
6. For any consequential and incidental damages.
7. For punitive damages in the amount of at least \$100,000.
8. For costs of the suit and Plaintiff's reasonable attorneys' fees pursuant to Civil Code § 1794(d).
9. For prejudgment interest at the legal rate.



1 10. And for such other relief as the Court may deem proper.

2 DATED: April 7, 2008

3 ANDERSON LAW FIRM  
4 MARTIN W. ANDERSON  
5 MICHAEL E. LINDSEY

6   
7 By: \_\_\_\_\_  
8 MARTIN W. ANDERSON  
9 Attorneys for Plaintiff Denise Miller

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial on all causes of action asserted herein.

12 DATED: April 7, 2008

13 ANDERSON LAW FIRM  
14 MARTIN W. ANDERSON  
15 MICHAEL E. LINDSEY

16   
17 By: \_\_\_\_\_  
18 MARTIN W. ANDERSON  
19 Attorneys for Plaintiff Denise Miller

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ANDERSON LAW FIRM  
2070 NORTH TUSTIN AVENUE  
SANTA ANA, CALIFORNIA 92705  
TELEPHONE: (714) 516-2700

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

DENISE MILLER

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN PLAINTIFF CASES OF THE DISTRICT OF COLUMBIA)

BY: *g*

(c) Attorney's (Firm Name, Address, and Telephone Number) DEPUTY  
Anderson Law Firm, 2070 N. Tustin Ave., Santa Ana, CA 92705  
Tel: (714) 516-2700

## DEFENDANTS

GENERAL MOTORS CORPORATION

County of Residence of First Listed Defendant (not a US Pltf case)  
(IN U.S. PLAINTIFF CASES ONLY):

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 cv 0665 J AJB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332

Brief description of cause:  
Consumer Warranty Action

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 313,869.81

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/07/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

See 4/11/08

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 149682 - SH**

**April 11, 2008  
16:26:45**

**Civ Fil Non-Pris**

USAO #: 08CV0664

Judge.: NAPOLEON A JONES, JR

Amount.: \$350.00 CK

Check#: BC1166

**Total-> \$350.00**

**FROM: MILLER V. GM CORP**